IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 112 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HASMUKHLAL N. LAKDAWALA - Petitioner(s)
Versus
SAILRUPA DYEING & PRINTING MILLS - Respondent(s)

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Appearance :
MR SP MAJMUDAR for Petitioner(s) : 1,
MR PRANAV M RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 12/12/2006

ORAL JUDGMENT

1.Present Company Petition has been filed by the petitioner for an appropriate order of winding up of the respondent company i.e. Sailkrupa Dyeing &

Printing Mills alleging inter alia that an amount of Rs.8,76,316/- is outstanding by the respondent company to the present petitioner.

2.In response to the notice issued by this Court, Shri Pranav Raval, learned advocate appeared on behalf of the respondent company and an affidavit in reply is also filed on behalf of the respondent company. That according to the respondent company, undisputed amount due and payable by the respondent company would be Rs.1,50,000/- and it was submitted by him that the respondent company is ready and willing to pay the said amount. Shri Raval, learned advocate has submitted that in view of the fact that the rest of the amount disputed, the present Company Petition may not entertained as the dues are not admitted and it will be for the petitioner company to initiate appropriate proceedings before the appropriate forum for the balance amount.

3.Today, when the matter is called out, an undertaking is filed on behalf of the respondent company undertaking to pay an amount of Rs.1,50,000/- by 15th January, 2007 by way of post dated cheques and the first installment of Rs.25,000/- to be paid to the petitioner, is already given to the learned advocate appearing for the petitioner dated 9.12.2006. So far as remaining amount is concerned, five post dated cheques are given. The learned counsel for the respondent

company has assured the Court that aforesaid cheques will be honoured.

4. In view of the above, so far as undisputed amount is concerned, the same is paid and/or will be paid as stated in the undertaking.

5. It appears that in the petition, the claim on behalf of the petitioner against the respondent company is for the amount of Rs.8,76,316/- out of which, Rs.1,50,000/- is paid/will be paid and the liability to that extent has been admitted by the respondent company. In view of the fact that with regard to the rest of the amount/dispute, the dues are not admitted, it will not be proper to enter into the said disputed question of fact in a petition under Sections 433 and 434 of the Companies Act; 1956. However, it will be open for the petitioner to initiate appropriate proceedings before the appropriate forum for claiming the balance amount due and payable by the respondent company to the petitioner and as and when such proceedings are initiated, the same will be dealt with in accordance with law and on merits. However, it is made clear that this Court has not expressed any opinion on the merits in favour of either parties.

6. With these, the present Company Petition is disposed of.

[M.R.SHAH, J.]

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